IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23439 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLI BHIKHA KADVA - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR SUNIL C PATEL for Petitioner(s) : 1,
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. In this petition the grievance made by the petitioner is that his lands which are situated in village Kankana, Taluka Mangrol, District Junagadh, have been acquired by the respondent Government without following the procedure prescribed under the provisions of the Land Acquisition Act [for short "the Act"]. The lands have been utilized for widening the public road.

1.1. It is the say of the petitioner that his father was holding agricultural lands bearing Survey Nos. 26, 32, 41, 45, 52, 64 and 90 and upon death of the petitioner's father on 15th December, 1959, the name of heirs were entered into the Revenue Records in respect of the said lands. By virtue of the same, the present petitioner became owner and occupier of the land bearing Survey no. 41, admeasuring 4 Acres - 31 Gunthas. It is stated by the petitioner that a part of the said land admeasuring approximately 3 Acres - 27 Gunthas was sold by him and the remaining land admeasuring 1 Acre - 4 Gunthas was later on usurped by the Government without following any procedure, for widening the road. The petitioner has, therefore, prayed in this petition that the respondent Government be directed to consider the case of the petitioner and to pay adequate compensation for depriving him of the land in question. According to the petitioner, he has been making efforts in the vain hope that the Government could be persuaded to pay him compensation. According to the petitioner, he has till this date not received any amount towards the compensation. He has, therefore, contended that when the acquisition is *ab initio void*, the Government can as well be directed either to pay compensation or to return the land to the petitioner.

2. The respondent Government has contested the petition by filing affidavit-in-reply of one Mr. Bipin Shrimali, Collector, Junagadh. It is contended by the respondent that the event of road widening took place some

time in the year 1978-79 and for the first time, the petitioner had lodged his claim with the Government on 24th February, 2003. Therefore, the claim is made at a belated stage, which cannot be entertained. He has further contended that the Government, based on the decision rendered by the Apex Court in the case of **State of Maharashtra v. Digamber reported in 1995 (4) SCC pg. 683** has issued a Circular whereby, it has restrained the concerned officials from entertaining such claim or making any concession in this behalf. In support of this contention, the deponent has annexed a copy of the Circular as also copy of the extract taken from the decision of the Apex Court.

3. We have heard Mr. S.C. Patel, learned advocate for the petitioner and Mr. S.P. Hasurkar, learned A.G.P., for the respondent Government. By way of their submissions they have merely repeated their contentions made in the pleadings. Over and above that Mr. Patel has submitted that on account of the peculiar circumstances that existed in the case of the petitioner, there is delay in claiming the compensation and such delay can be condoned and the Government be directed to pay compensation. As against that Mr. Hasurkar has submitted that no proper explanation has been rendered by the petitioner for the gross delay that has been caused in making the claim. According to him when proper explanation is not coming forth, request of the petitioner cannot be entertained.

4. We have carefully gone through the contents of the petition as well as the annexures thereto and also the affidavit-in-reply of the respondent. We have also carefully considered the rival submissions. It is true that the petitioner's land was utilized by the respondent Government while road widening project was undertaken in the year 1978-79 by the District Panchayat. It is also an admitted fact that the land was utilized without its acquisition under

the Act. However, according to the petitioner, he had commenced the efforts to persuade the respondent to pay compensation even prior to year 1983. He had contacted the local Member of the Legislative Assembly and had made written representations to him and other authorities. It is his say that in the month of June, 1983 there were heavy floods in the District of Junagadh and that caused large scale of destruction. So far as the petitioner was concerned, all his household articles and the valuables got swept away in the floods which included the copies of the representations made to the different authorities. At this juncture, it may be noted that the petitioner is a physically handicapped person. He is not able to walk since all the limbs below waist have gone numb and we are informed that recently, he has even suffered a stroke of paralysis requiring hospitalization. It is further averred by the petitioner that on account of physical disability he is not able to cultivate the land personally and he has to hire labourers to carry out the agricultural activity in the field. However, according to him, after deducting all the expenses he receives a paltry sum of Rs,15,000 annually for the maintenance of his family and himself. He has, therefore, contended that for want of proper record and on account of his physical disability, as also financial constraints he could not pursue the efforts vigorously and only in the year 2003, he made efforts by writing request letters to different authorities, but did not receive any favourable response. It appears that ultimately on 24th February, 2003 the petitioner served a notice under Section 80 of the Civil Procedure Code on the respondents and on 24th July, 2003, he made a complaint to the Chief Minister on `on-line forum'. However, to his utter dismay, his request was turned down and ultimately, he has now been constrained to file this petition.

4.1. The averments that have been made in the petition explaining the

delay and the efforts made by the petitioner for obtaining compensation have not been denied by the respondents in the affidavit-in-reply. Mr. Hasurkar is not in a position to refute those contentions. Further it is an admitted position that the land of the petitioner was utilized by the respondent for the purpose of widening the road, without resorting to any procedure which is prescribed under the Act. In view of the same, it is necessary for us to conclude that the petitioner, despite he is handicapped, and the adverse circumstances in which he had been placed after the usurpation of his land, he has been making efforts to get compensation for the land. The adverse circumstances can be spelt out or enumerated as under.

4.2. (i) The petitioner is physically handicapped person and he is not able to use the limbs below his waist. (ii) His income is very meagre and it is hardly sufficient to sustain him and his family. (iii) In the year 1983, there was flood and it completely ruined the petitioner. (iv) In the same flood, proof regarding whatever efforts that were made prior to year 1982-83, got swept away. (v) Even recently, he has suffered stroke of paralysis requiring hospitalization.

4.3. The above mentioned factors clearly show what agonies have been suffered by the petitioner. We cannot be a mere silent spectator to this. As already stated above, the case of the respondents, to refute the claim of the petitioner is only that the same is made at a belated stage. However, the aforesaid factors clearly show that there was no delay caused in commencing the efforts to claim compensation, but even if the delay was there in lodging the claim, it was solely due to the adverse circumstances faced by the petitioner. In this view of the matter, in our opinion, there is no delay caused in making the claim and even if there is any, it can be condoned. Considering the peculiar

facts of this case, even the ratio of the Apex Court 's decision will not be applicable to this case. This petition, therefore, deserves to be allowed and the petitioner deserves to be granted compensation because, in our opinion, without resorting to the procedure prescribed under the Act, if the land is taken away by the Government, it amounts to usurping of the land illegally and, therefore, the action of the respondents is required to be declared as illegal, and it is hereby declared as illegal, arbitrary and without authority of law. However, since the land has been subjected to construction of road, there is no way in which the respondents can be directed to return it to the petitioner, but the respondents can certainly be directed to award compensation to the petitioner. Mr. Hasurkar has drawn our attention to the statements annexed to the affidavit-in-reply which reflect the rates at which the lands were acquired at village Kankana, Taluka Mangrol during the relevant period and shortly thereafter. The statements show that the compensation was payable at the rate of Rs.2,555=68 paise per Acre for the irrigated land which comes to Rs.63=89 paise per Guntha. The petitioner has lost his land to the extent of 25 Gunthas. The compensation that may, therefore, be payable to him would be Rs.1,600=00. But considering the fact that, had the petitioner invested this amount in Fixed Deposit, by the end of December, 2005, the amount would have been in the vicinity of Rs.54,500=00. The petitioner, therefore, would be entitled to receive such amount. However, considering the uncertainties and different eventualities, ends of justice would be met if the respondents are directed to pay to the petitioner a sum of Rs.40,000=00. Accordingly the respondents are directed to pay to the petitioner a sum of Rs.40,000=00 [Rs. Forty Thousand only] on or before 31st January, 2006. If by the stipulated date the amount of compensation is not paid, the respondents will be liable to pay interest on Rs.40,000=00 at the present rate for the period between 31st January, 2006 and the date of payment. The respondents are jointly and severally liable to make

the payment of compensation to the petitioner in the aforesaid terms. Rule is made absolute with no order as to costs.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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